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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

TIA SMITH, Plaintiff and Appellant, v. IH4 PROPERTY WEST, LP et al., Defendants and Respondents.	B271813, consolidated with B278477, B279561 Los Angeles County Super. Ct. No. BC553608

APPEAL from judgments and an order of the Superior Court of Los Angeles County, Teresa A. Beaudet, Judge. Affirmed.

Tia Smith, in pro. per., for Plaintiff and Appellant.

Akerman LLP and Justin D. Balser for Defendants and Respondents Nationstar Mortgage LLC and Homesearch.com Realty Services Inc.

Law Offices of Gregory W. Patterson and Gregory W. Patterson for Defendant and Respondent IH4 Property West, LP.

INTRODUCTION

After unsuccessfully suing her note holder, the trustee of her trust deed, and her loan servicer for wrongful foreclosure, plaintiff filed this action against several entities that participated in subsequent conveyances of her former residence following a trustee sale. The trial court sustained the demurrer of defendants Nationstar Mortgage LLC (Nationstar) and Homesearch.com Realty Services Inc. (Homesearch) without leave to amend, concluding the judgment in plaintiff's prior action precluded the claims against these defendants under the res judicata doctrine. The court also sustained the demurrer of defendants IH4 Property West, LP (IH4) and IH2 Property West, LP (IH2) on res judicata and other grounds. And, after sustaining the defendants' demurrers, the court dissolved a preliminary injunction enjoining IH4, the current owner of the property, from evicting plaintiff and her tenants from the residence. Plaintiff filed separate appeals challenging each of these rulings. We consolidated the appeals for decision and affirm.

FACTS AND PROCEDURAL BACKGROUND

Consistent with the applicable standard of review, we draw our statement of facts from the allegations of plaintiff's complaints and other matters properly subject to judicial notice.[1]

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[1] We draw some facts from plaintiff's operative third amended complaint in *Smith v. Mortgage Electronic Registration Systems, Inc., et al.* (Super. Ct. L.A. County, No. BC465542), and from the appellate opinion affirming the judgment in that action, *Smith v. American Mortgage Network* (May 21, 2015, B252585) [nonpub. opn.] (*Smith I*). In ruling on the demurrers at issue in these consolidated appeals, the trial court took judicial notice of the complaint and appellate opinion in *Smith I*.

(*Stevenson v. Superior Court* (1997) 16 Cal.4th 880, 885.) "[W]e treat as true all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Freeman v. San Diego Assn. of Realtors* (1999) 77 Cal.App.4th 171, 178, fn. 3.)

1. *Loan Origination and Foreclosure*

In 2006, plaintiff executed a promissory note payable to American Mortgage Network to obtain a loan for $556,000, secured by a deed of trust on real property she owned in Los Angeles. Mortgage Electronic Registration Systems, Inc. (MERS) was the beneficiary of the trust deed. By 2007, the RALI 2007-QO1 trust, a mortgage pooling security, had acquired plaintiff's trust deed. Deutsche Bank Trust Company Americas (Deutsche Bank), which was also the trustee for the certificate holders of the RALI 2007-QO1 trust, acquired plaintiff's note. Deutsche Bank retained Aurora Loan Services LLC (Aurora) to service the loan.

In May, June, and August 2008, plaintiff negotiated and entered into three successive loan payment workout agreements with Aurora, each requiring that she make four monthly payments to become current on her loan, the fourth in each case being a balloon payment. She made only the first payment under the first agreement before renegotiating that workout. Under the second agreement, plaintiff made the first, second, and third payments, but on the alleged advice of Aurora's representative did not make the fourth payment. Instead, she negotiated the third workout. Under that agreement, she again made the first, second, and third payments and failed to make the fourth, again on the alleged advice of Aurora's representative, who stated a fourth workout agreement would then be negotiated.

In January 2009, plaintiff and Aurora entered into a fourth workout agreement, calling for four monthly payments that would not yet bring the loan current, after which the parties would renegotiate the terms of the loan. Plaintiff made the four payments, and Aurora's representative advised her not to make any additional payments until she received notice about a loan modification.

Sometime in July 2009, Aurora declined to modify plaintiff's loan. Instead, it extended plaintiff three different workout offers. Plaintiff rejected them all but continued to pursue a loan modification.

On September 15, 2009, MERS substituted Cal-Western Reconveyance Corporation (Cal-Western) as the trustee on plaintiff's deed of trust. On September 23, 2009, Cal-Western executed a notice of default and election to sell against the property based on a $25,509.83 loan default.

On October 1, 2009, MERS assigned to Aurora its beneficial interest in plaintiff's trust deed, "[t]ogether with the note or notes therein described or referred to, in said Deed of Trust, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust." By this time, Aurora had been servicing plaintiff's loan for a year and a half. Aurora recorded the assignment on December 31, 2009.

In January 2010, Aurora offered plaintiff a six-month forbearance agreement—the fifth workout agreement—while considering her application for a loan modification. She accepted the agreement and made the six payments required under it. However, on November 26, 2010, Aurora denied plaintiff's request for modification.

In December 2010, plaintiff resubmitted her request for a loan modification. She made no payments on her loan while the modification request was pending. On June 2, 2011, Aurora denied the loan modification request.

On May 9, 2011, Cal-Western recorded a notice of trustee's sale.

2. *Plaintiff Files the* Smith I *Action*

On July 15, 2011, plaintiff filed the *Smith I* action (see fn. 1, *ante*) against several financial and mortgage institutions, including MERS; Aurora; and Deutsche Bank, the trustee for the RALI 2007-QO1 trust.

On November 16, 2011, Aurora purchased the property at the trustee's sale for a credit bid of $362,500.

Following the trustee's sale, plaintiff filed her operative third amended complaint in the *Smith I* action. Among other things, the complaint asserted a claim for wrongful foreclosure and to set aside the trustee's sale, based on the allegation that MERS did not have a legitimate agency relationship with the original lender, and therefore lacked authority to assign a beneficial interest in the note and deed of trust to Aurora. On this basis, the complaint alleged Aurora's "purported status as beneficiary is void *ab initio*," and Aurora thus lacked "authority to exercise the power of sale" under the deed of trust. Additionally, the complaint alleged Aurora was not a "[c]reditor" and could not legally submit a "credit bid" to acquire the property.

On August 16, 2013, the trial court in *Smith I* sustained the defendants' demurrer without leave to amend. Plaintiff filed a timely notice of appeal from the resulting judgment.

3. *Plaintiff Files this Action and the Trial Court Stays Proceedings Pending the* Smith I *Appeal*

Around April 2014, Aurora conveyed the property to Nationstar via a quitclaim deed. Nationstar then conveyed the property to IH4 via another quitclaim deed. Both deeds were recorded on April 7, 2014.

On August 4, 2014, while the *Smith I* appeal was pending, plaintiff filed this action against Aurora, Nationstar, Homesearch, and IH4. Based on her underlying claim in *Smith I* that Aurora lacked authority to exercise the power of sale and submit a credit bid to purchase the property, plaintiff asserted 10 causes of action, all challenging Aurora's conveyance of the property to Nationstar and Nationstar's subsequent conveyance to IH4.[2]

On September 5, 2014, Aurora, Nationstar, and Homesearch filed a demurrer to the complaint, arguing, among other things, plaintiff's new action violated the automatic stay in *Smith I*. On September 10, 2014, plaintiff voluntarily

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[2] The causes of action were (1) declaratory relief; (2) injunctive relief; (3) cancellation of instruments; (4) tortious interference with business relations; (5) quiet title; (6) conversion; (7) civil conspiracy to commit conversion; (8) fraudulent conveyance; (9) civil conspiracy to commit fraudulent conveyance of real property; and (10) violations of Business and Professions Code section 17200 et seq. The declaratory relief and conversion claims were asserted against only IH4, Nationstar, and Aurora; the cancellation of instruments and quiet title claims were asserted against only IH4 and Nationstar; and the tortious interference with business relations claim was asserted against only IH4. The remaining claims were asserted against all defendants.

dismissed Aurora, which was a respondent in the *Smith I* appeal. On November 25, 2014, the trial court stayed all proceedings pending the appellate court's decision in *Smith I*.

4. *IH4 Prevails in an Unlawful Detainer Action and Plaintiff Obtains a Preliminary Injunction Enjoining Eviction*

On August 4, 2014, IH4 filed a complaint for unlawful detainer against plaintiff's tenants who occupied the property at the time.[3] On August 21, 2014, plaintiff filed a prejudgment claim of right to possession in the unlawful detainer action.

On November 17, 2014, a jury returned a verdict finding IH4 was entitled to possession of the property. Plaintiff appealed the judgment to the superior court's appellate division.[4]

On March 10, 2015, plaintiff filed an ex parte application for limited relief from the stay in this action and for a temporary restraining order against eviction. The trial court continued the

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[3] The unlawful detainer complaint designated the plaintiff as IH2 and alleged IH2 was the owner of the property, having acquired it from Nationstar by a quitclaim deed. On August 15, 2014, plaintiff amended her complaint in this action to add IH2 as a defendant. On October 6, 2014, the court in the unlawful detainer action determined IH2 had been designated as the plaintiff due to a typographical error and deemed the unlawful detainer complaint amended to reflect that IH4 was the true plaintiff. To avoid confusion, we refer to both entities as IH4 in this opinion.

[4] As we discuss later, on May 9, 2016, the appellate division affirmed the unlawful detainer judgment. On June 20, 2016, our colleagues in Division 2 summarily denied plaintiff's petition for transfer and, on August 17, 2016, the Supreme Court denied plaintiff's petition for a writ of mandate.

hearing on the application for one week to allow IH4 to file an opposition. IH4 failed to oppose the application and, on March 17, 2015, the trial court issued an order enjoining IH4 from "proceeding in any way with an eviction related to the property" until "further court order."[5]

5. *Division 1 Affirms the* Smith I *Judgment*

On May 21, 2015, our colleagues in Division 1 filed an unpublished opinion affirming the judgment in *Smith I*. Division 1 concluded the alleged facts and judicially noticeable documents conclusively established plaintiff defaulted on her loan obligations and, therefore, she lacked standing to challenge the foreclosure. The court also held plaintiff had not alleged sufficient facts to support the claim that Aurora never acquired servicing rights when it began servicing her loan in April 2008.

Plaintiff filed a petition for rehearing and a petition for review challenging the *Smith I* decision. Both were denied. On September 8, 2015, the remittitur issued in *Smith I*.

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[5] Although plaintiff applied for a temporary restraining order and order to show cause why a preliminary injunction should not issue, the court's order enjoining eviction until "further court order" was effectively a preliminary injunction. (See *McManus v. KPAL Broadcasting Corp*. (1960) 182 Cal.App.2d 558, 562 ["It has been held that a so-called 'restraining order' that restrains specific acts until further order of the court, instead of until the hearing of the order to show cause, is a preliminary injunction and not a restraining order and 'an order, made after the hearing on the order to show cause, continuing, a restraining order in effect until a decision of the case on its merits is equivalent to a preliminary injunction' "].)

6. *Plaintiff Moves to Set Aside the* Smith I *Judgment*

Upon remand of *Smith I*, plaintiff discovered that Deutsche Bank's attorneys had sometimes misspelled the name of the pooling security as the "RALI 2007-Q01 Trust" rather than the "RALI 2007-QO1 Trust"—that is, they had sometimes substituted a zero for a capital O in the trust's name. The misspelling was repeated in the judgment of dismissal. On February 3, 2016, plaintiff moved to set aside the *Smith I* judgment on the ground that the misspelling constituted extrinsic fraud.

The *Smith I* defendants moved to modify the judgment, arguing the misspelling was a simple clerical error. In support of the motion, Deutsche Bank's attorney declared that the proper name of the RALI trust was "RALI 2007-QO1 Trust," and the use of a "0" rather than an "O" in some of the bank's filings was "no more than a typographical error." The trial court denied plaintiff's motion to set aside the *Smith I* judgment and granted the defendants' motion to modify the judgment nunc pro tunc.

On April 1, 2016, plaintiff filed an appeal from both orders.

7. *The Trial Court Sustains Nationstar's and Homesearch's Amended Demurrer*

On July 8, 2015, the trial court lifted the stay in this action following the appellate decision in *Smith I*.

On November 12, 2015, Nationstar and Homesearch filed an amended demurrer, arguing the *Smith I* judgment precluded plaintiff from challenging the November 2011 trustee's sale. Because each cause of action was premised on the alleged illegality of the trustee's sale, the moving defendants argued the entire complaint should be dismissed under the doctrines of res judicata and collateral estoppel.

On January 25, 2016, the trial court sustained Nationstar's and Homesearch's demurrer without leave to amend. Plaintiff appealed from the resulting judgment.

8. *The Court Sustains IH4's Demurrer to Plaintiff's First Amended Complaint*

On February 22, 2016, plaintiff filed a first amended complaint against the remaining defendants. Although plaintiff added several new causes of action to the amended pleading, all still were premised on the alleged illegality of Aurora's foreclosure and the defendants' subsequent actions in connection with the conveyances that followed.[6] Specifically, the new and amended claims challenged IH4's acquisition of the property via a quitclaim deed and its later prosecution of the unlawful detainer action against plaintiff and her tenants.

On March 28, 2016, IH4 filed a demurrer to the first amended complaint. Like Nationstar and Homesearch, IH4 argued the *Smith I* judgment precluded plaintiff from challenging the November 2011 trustee's sale, and res judicata thus barred plaintiff's claims concerning the post-foreclosure conveyances and unlawful detainer action.

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[6] The first amended complaint asserted 12 causes of action against IH4 for (1) receiving stolen property in violation of Penal Code section 496(a); (2) civil extortion; (3) cancellation of instruments; (4) violations of Business and Professions Code section 17900 et seq.; (5) violations of Business and Professions Code section 10130; (6) tortious interference with contractual relations; (7) abuse of process (against IH2); (8) abuse of process (against IH4); (9) conversion; (10) intentional infliction of emotional distress; (11) quiet title; and (12) violations of Business and Professions Code section 17200 et seq.

On May 2, 2016, the trial court sustained the demurrer without leave to amend, concluding the *Smith I* judgment precluded plaintiff's claims under the doctrine of res judicata. The court also concluded plaintiff could not maintain claims stemming from the unlawful detainer proceedings because the complaint admitted IH4 prevailed in that action.

Although a judgment of dismissal had not been entered, plaintiff filed a notice of appeal from the order sustaining the demurrer.

9. *The Superior Court Appellate Division Affirms the Unlawful Detainer Judgment against Plaintiff*

On May 9, 2016, the appellate division of the superior court affirmed the unlawful detainer judgment against plaintiff and her tenants. Among other things, the appellate division's opinion addressed plaintiff's claim that the trial court "allowed the unlawful detainer action to proceed despite the existence of a title dispute regarding the premises." Concluding substantial evidence supported the jury's finding that IH4 was entitled to possession of the property, the appellate division explained: IH4 presented evidence that, in purchasing the property, it "obtained a title insurance policy showing 'clean title.' " Its evidence showed "Aurora acquired title . . . in exchange for $362,500," then "transferred the property via quitclam deed to Nationstar," which in turn transferred it to IH4. IH4 "also introduced a final closing statement showing [it] purchased the property from Nationstar for a total purchase price of $513,344.57." These documents, the appellate division observed, "indicated that all requirements regarding the conduct of the sale were met and the rebuttable presumption found at Civil Code

section 2924, subdivision (c), therefore came into effect."[7] On the record plaintiff presented for appeal, the appellate division concluded that "[plaintiff's] evidence failed to rebut the presumption and that [IH4's] evidence was sufficient to support the judgment."[8]

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[7] Civil Code section 2924, subdivision (c) provides: "A recital in the deed executed pursuant to the power of sale of compliance with all requirements of law regarding the mailing of copies of notices or the publication of a copy of the notice of default or the personal delivery of the copy of the notice of default or the posting of copies of the notice of sale or the publication of a copy thereof shall constitute prima facie evidence of compliance with these requirements and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value and without notice." Where the statute's requirements are satisfied, this presumption of regularity shifts the burden to the party challenging a trustee's sale to show impropriety in the foreclosure process. (*Melendrez v. D & I Investment, Inc.* (2005) 127 Cal.App.4th 1238, 1258.)

[8] In her briefs, plaintiff repeatedly refers to an earlier unlawful detainer action Aurora filed in 2012 and subsequently dismissed in 2013, before conveying the property to Nationstar in 2014. Plaintiff maintains Aurora's voluntary dismissal of the action, with prejudice, effectively adjudicated that "(1) [Aurora] did not have a right of possession to the Property; (2) it was neither the owner of the Property nor the real party in interest; and (3) that the title to the Property was not duly perfected." Plaintiff did not raise this issue in the trial court and has thus forfeited it as a ground for reversal of the judgment on appeal. (See *JSJ Limited Partnership v. Mehrban* (2012) 205 Cal.App.4th 1512, 1526 [res judicata is an affirmative defense that is forfeited if not raised and proven in the trial court].) Moreover, the scant record plaintiff references, presented by way of a request for judicial notice of the unlawful detainer register of action and plaintiff's answer to the unlawful detainer complaint, fails to

10. ***IH4 Successfully Moves to Dissolve the Preliminary Injunction***

On April 1, 2016, IH4 filed a motion to dissolve the March 17, 2015 preliminary injunction, arguing plaintiff could not show a reasonable likelihood of success on the merits in view of the ruling sustaining IH4's demurrer without leave to amend. Although the trial court indicated its tentative decision was to grant the motion, it decided to stay the ruling to consider the effect of plaintiff's then pending appeal in the unlawful detainer action.

On September 29, 2016, IH4 filed a renewed motion to dissolve the preliminary injunction.[9] Plaintiff opposed the motion, arguing the trial court lacked jurisdiction to dissolve the injunction due to plaintiff's pending appeals in *Smith I* and this action.

On November 1, 2016, the trial court granted IH4's motion. The court reasoned the injunction could not survive the order

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establish the dismissal was based upon Aurora's lack of ownership or title to the property. (See *Vella v. Hudgins* (1977) 20 Cal.3d 251, 257 ["The burden of proving that the requirements for application of res judicata have been met is upon the party seeking to assert it as a bar or estoppel."]; *Smith v. ExxonMobil Oil Corp.* (2007) 153 Cal.App.4th 1407, 1414-1415 [offensive application of collateral estoppel is subject to greater scrutiny due to potential for injustice].)

[9] Following the appellate division's affirmance of the unlawful detainer judgment, plaintiff filed a bankruptcy petition staying proceedings in this action. Before filing its renewed motion, IH4 successfully applied to the bankruptcy court for relief from the stay.

sustaining IH4's demurrer without leave to amend because the "effective result" of its order was a "final determination of the merits of the action in favor of [IH4] and against [p]laintiff." The court signed and filed the order on November 1, 2016. Plaintiff filed a timely notice of appeal.

11. *Division 1 Affirms the Order Denying Plaintiff's Motion to Set Aside the Judgment in* Smith I

On August 27, 2018, Division 1 filed an unpublished opinion affirming the order denying plaintiff's motion to set aside the judgment in *Smith I* and granting the defendants' motion to modify the judgment nunc pro tunc to reflect that the proper name of the RALI trust was "RALI 2007-QO1 Trust." The court reasoned there had been no extrinsic fraud because plaintiff litigated her claims against the appropriate entity, Deutsche Bank, the trustee of the RALI 2007-QO1 Trust, and the trial court reasonably found the misspelling in some of Deutsche Bank's pleadings was a "minor clerical error."

DISCUSSION

1. *Appealability of Order Sustaining IH4's Demurrer*

After reviewing the record for plaintiff's purported appeal from the order sustaining IH4's demurrer without leave to amend, we notified the parties that the appeal appeared to have been taken from a nonappealable order. (*Hill v. City of Long Beach* (1995) 33 Cal.App.4th 1684, 1695; *Erlach v. Sierra Asset Servicing, LLC* (2014) 226 Cal.App.4th 1281, 1290-1291 (*Erlach*).) Our notice asked the parties to provide a copy of the appealable final judgment or to show cause why the appeal should not be dismissed. In response, both plaintiff and IH4 referred to remarks the trial court made in its subsequent order dissolving the preliminary injunction, wherein the court acknowledged a

judgment of dismissal had not been entered, but nonetheless characterized its order sustaining IH4's demurrer as a "final determination of the merits of the action in favor of [IH4] and against Plaintiff." Because the trial court's remarks indicated it meant the order to serve as a final judgment, the parties requested that this court save plaintiff's appeal by deeming the orders to incorporate an appealable judgment of dismissal. (See *Erlach,* at p. 1291.)

"An appealable judgment or order is a jurisdictional prerequisite to an appeal." (*Connell v. Superior Court* (1997) 59 Cal.App.4th 382, 392; *Hedwall v. PCMV, LLC* (2018) 22 Cal.App.5th 564, 571 (*Hedwall*).) Under the " 'one final judgment' " rule, an appeal cannot be taken from a judgment that fails to resolve to finality the rights of the parties to an action. (*Hill v. City of Clovis* (1998) 63 Cal.App.4th 434, 442-443; Code Civ. Proc., § 577 ["A judgment is the final determination of the rights of the parties in an action or proceeding."].) Although the order sustaining IH4's demurrer resolved all causes of action between the parties, the record shows the trial court's failure to enter a formal judgment of dismissal left the disposition of the preliminary injunction uncertain and subject to further judicial action. (See *Lyon v. Goss* (1942) 19 Cal.2d 659, 670 ["where anything further in the nature of judicial action on the part of the court is essential to a final determination of the rights of the parties, the decree is interlocutory" and not "final"]; cf. *City of Oakland v. Superior Court* (1982) 136 Cal.App.3d 565, 569 (*City of Oakland*) ["when *a judgment is entered* in favor of the defendant, the preliminary injunction dissolves without the necessity of a formal motion to dissolve" (italics added)].)

Nevertheless, we agree with the parties that the demurrer ruling coupled with the signed order dissolving the preliminary injunction did finally resolve plaintiff's and IH4's rights in the action, and we may amend the latter order to include a judgment, rather than dismiss the appeal. (*Hedwall, supra,* 22 Cal.App.5th at p. 571; see *Estate of Dito* (2011) 198 Cal.App.4th 791,799-800.) An appellate court may deem an order to incorporate a judgment of dismissal, and it is "particularly appropriate to do so when the absence of a final judgment results from inadvertence or mistake," and the respondent does not argue the appeal should be dismissed. (*Erlach, supra,* 226 Cal.App.4th at p. 1291; *Hedwall,* at p. 571.)

Here, the trial court did not enter a judgment because it believed this court would treat the order sustaining IH4's demurrer as a final judgment on the merits.[10] And, IH4 has

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[10] In addition to what we have already quoted, the trial court's order dissolving the injunction contained the following statement, which the parties maintain further supports their request to deem the orders to incorporate an appealable judgment: "On May 2, 2016, this Court sustained the demurrer brought by IH4 and IH2 without leave to amend. Plaintiff represents that she is appealing this order. Plaintiff does not have any surviving claims in this action. Although it does not appear that a judgment of dismissal was entered as to IH4 and IH2, Plaintiff is effectively treating the May 2, 2016 order as a judgment of dismissal by appealing the order. (*Zipperer v.* [*County*] *of Santa Clara* (2005) 133 Cal.App.4th 1013, 1019 ('Orders sustaining demurrers are not appealable. But an appellate court may deem an order sustaining a demurrer to incorporate a judgment of dismissal. It is particularly appropriate to do so when the absence of a final judgment results from inadvertence or mistake.')"

joined with plaintiff in requesting that we save the appeal. Under the circumstances, we will exercise our discretion to deem the signed order dissolving the injunction as incorporating a final judgment between the parties, and will treat plaintiff's premature notice of appeal as filed immediately after entry of the judgment. (See *Hedwall, supra,* 22 Cal.App.5th at p. 571; Cal. Rules of Court, rule 8.104(d)(2).)

2. *Standard of Review*

"When the trial court sustains a demurrer, we review the complaint de novo to determine whether it alleges facts stating a cause of action on any possible legal theory. [Citation.] ' " 'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law.' " [Citations.]' [Citation.] 'Further, "we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context." [Citations.]' " (*Rossberg v. Bank of America, N.A.* (2013) 219 Cal.App.4th 1481, 1490.)

"When a demurrer is sustained without leave to amend, we also must decide whether there is a reasonable possibility that the defect can be cured by amendment." (*Koszdin v. State Comp. Ins. Fund* (2010) 186 Cal.App.4th 480, 487.) "The plaintiff bears the burden of proving there is a reasonable possibility of amendment. [Citation.] . . . [¶] To satisfy that burden on appeal, a plaintiff 'must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading.' [Citation.] The assertion of an abstract right to amend does not satisfy this burden. [Citation.] The plaintiff must clearly and specifically set forth the 'applicable substantive law' [citation] and the legal basis for amendment, i.e., the elements of the cause of action and authority for it." (*Rakestraw*

v. California Physicians' Service (2000) 81 Cal.App.4th 39, 43-44 (*Rakestraw*).)

As for the trial court's decision to dissolve the preliminary injunction, we review the ruling for an abuse of discretion. (*Harbor Chevrolet Corp. v. Machinists Local Union* (1959) 173 Cal.App.2d 380, 384.) To the extent plaintiff argues the court lacked jurisdiction to enter the order, we review this contention de novo as a question of law. (*Tearlach Resources Limited v. Western States Internat., Inc.* (2013) 219 Cal.App.4th 773, 780.)

3. *Res Judicata Bars Most of Plaintiff's Claims*

"Generally, ' "[r]es judicata" describes the preclusive effect of a final judgment on the merits. Res judicata, or claim preclusion, prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them.' " (*Planning & Conservation League v. Castaic Lake Water Agency* (2009) 180 Cal.App.4th 210, 226 (*Castaic Lake*).)
Res judicata bars a subsequent claim when " '(1) the decision in the prior proceeding is final and on the merits; (2) the present proceeding is on the same cause of action as the prior proceeding; and (3) the parties in the present proceeding or parties in privity with them were parties to the prior proceeding.' [Citation.] Upon satisfaction of these conditions, claim preclusion bars 'not only . . . issues that were actually litigated but also issues that could have been litigated.' " (*Ibid.*)

At the demurrer stage, " '[i]f all of the facts necessary to show that an action is barred by res judicata are within the complaint or subject to judicial notice, a trial court may properly sustain a general demurrer. [Citation.] In ruling on a demurrer based on res judicata, a court may take judicial notice of the

official acts or records of any court in this state.' " (*Castaic Lake, supra,* 180 Cal.App.4th at p. 225.)

In sustaining the demurrers at issue in this appeal, the trial court determined the judgment in *Smith I* precluded plaintiff from relitigating the causes of action asserted in her original complaint and first amended complaint because all claims invoked the same primary right—namely, the right to be free from an unlawful foreclosure—and all defendants were in privity with Aurora, having succeeded to its ownership interest through the series of conveyances challenged in the pleadings. Although plaintiff argues none of the prerequisites for application of res judicata were established, only her contentions that the *Smith I* judgment did not involve the same primary right and that the judgment was not on the merits warrant serious consideration.[11]

a. *Plaintiff's claims are premised on the same primary right she asserted in* Smith I

Plaintiff concedes at least some of her claims in *Smith I* sought to vindicate her "right to be free from an unlawful foreclosure." She argues this is not the same primary right she seeks to vindicate in this action because the claims challenging the post-foreclosure conveyances and unlawful detainer proceeding "arose primarily from events which occurred *or*

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[11] Plaintiff argues defendants cannot establish privity with the *Smith I* defendants because the *Smith I* judgment was entered in favor of Deutche Bank as trustee for the RALI 2007-*Q01* Trust. As discussed, this argument, which was the basis for plaintiff's motion to set aside the judgment in *Smith I*, has been rejected by Division 1. We will not reexamine the issue in this appeal.

became known to [plaintiff] *after*" the judgment in *Smith I* was entered. The argument misapprehends the primary right theory and the way the theory operates under the res judicata doctrine in this case.

"California's res judicata doctrine is based upon the primary right theory." (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 904 (*Mycogen*).) Under this theory, a " ' "cause of action" is comprised of a "primary right" of the plaintiff, a corresponding "primary duty" of the defendant, and a wrongful act by the defendant constituting a breach of that duty. [Citation.] The most salient characteristic of a primary right is that it is indivisible: the violation of a single primary right gives rise to but a single cause of action.' " (*Ibid.*) " ' "Even where there are multiple legal theories upon which recovery might be predicated, one injury gives rise to only one claim for relief." [Citation.] The primary right must also be distinguished from the *remedy* sought: "The violation of one primary right constitutes a single cause of action, though it may entitle the injured party to many forms of relief, and the relief is not to be confounded with the cause of action, one not being determinative of the other." ' " (*Ibid.*)

Plaintiff's claims in this action cannot be divided from the primary right she sought to vindicate in *Smith I*, because plaintiff's purported interest in the property is necessarily premised on her claim that the November 2011 foreclosure sale was unlawful. Although her claims challenge the post-foreclosure conveyances and other events occurring after Aurora acquired the property at the trustee sale, plaintiff cannot show this conduct injured her unless she can first demonstrate that the foreclosure sale was unlawful and that she maintains an interest in the

property to be vindicated by these claims. One injury gives rise to only one claim for relief, but the only injury plaintiff can properly allege is the loss of her property interest at the foreclosure sale. (See *Mycogen, supra,* 28 Cal.4th at p. 904.)

A review of plaintiff's claims against Homesearch and Nationstar in the initial complaint demonstrates the claims are inextricably linked to and predicated upon the successful vindication of the primary right at issue in *Smith I.* For instance, plaintiff's claim for "declaratory relief" seeks to determine "the rightful owner of [the] Property." Code of Civil Procedure section 1060 authorizes any person "who desires a declaration of his or her rights or duties . . . in, over or upon property" to seek declaratory judgment upon the showing of an "actual controversy." Here, plaintiff can plead an interest in the property, and show an actual controversy with the defendants in this action, only by challenging the foreclosure sale that resulted in her loss of her ownership interest in the property. The same is true for plaintiff's claims for cancellation of instruments, quiet title, conversion, and fraudulent conveyance. Because plaintiff can claim title or interest to the property only by successfully setting aside the foreclosure sale, these claims cannot be divided from the primary right plaintiff sought to vindicate in *Smith I*—the right to be free from an unlawful foreclosure. Plaintiff's civil conspiracy and Business and Professions Code section 17200 claims are derivative of the conversion and fraudulent conveyance claims, and similarly amount to different legal theories predicated on the same primary right. (See *Mycogen, supra,* 28 Cal.4th at p. 904.)

Most of the claims against IH4 in plaintiff's first amended complaint are likewise dependent upon the viability of her

wrongful foreclosure claim in *Smith I*. Plaintiff's cancellation of instruments, conversion, and quiet title claims all challenge the post-foreclosure conveyances from Aurora to Nationstar and Nationstar to IH4. But unless the foreclosure sale is set aside, none of these claims would vindicate a right plaintiff can claim in the property, because cancelling the conveyance instruments would result in returning ownership to Aurora—not plaintiff. Plaintiff's claim that IH4 illegally received stolen property is similarly premised on the assertion that the property was stolen from her at an unlawful foreclosure sale. The trial court correctly concluded these claims were based on the same primary right plaintiff sought to vindicate in *Smith I*.

b. *The* Smith I *judgment was on the merits*

Plaintiff argues the *Smith I* judgment should not be given preclusive effect because it was not a final decision " 'on the merits.' " (*Castaic Lake, supra,* 180 Cal.App.4th at p. 226.) She maintains this condition was not met because her wrongful foreclosure claim in *Smith I* was "dismissed for lack of standing," which she contends is a "threshold, technical and procedural ground" that does not resolve the merits of a claim. (Italics and bold omitted.) The applicable law is to the contrary.

A " 'judgment is on the merits if it is based on the substantive law, and determines that the plaintiff has no cause of action . . . . The judgment is not on the merits if it is based merely on rules of procedure, and determines only that the plaintiff is not entitled to recover in the particular action.' " (*Boccardo v. Safeway Stores, Inc.* (1982) 134 Cal.App.3d 1037, 1042 (*Boccardo*).) "A judgment given after the sustaining of a general demurrer on a *ground of substance*, for example, that an *absolute defense* is disclosed by the allegations of the complaint,

may be deemed a judgment on the merits, and conclusive in a subsequent suit." (*Goddard v. Security Title Ins. & Guarantee Co.* (1939) 14 Cal.2d 47, 52-53, italics added.)

Plaintiff cites numerous cases for the general proposition that a litigant's "standing to sue is a threshold issue which must be resolved before th[e] matter can be reached on its merits." (*Hernandez v. Atlantic Finance Co.* (1980) 105 Cal.App.3d 65, 71; see also *Iglesia Evangelica Latina, Inc. v. Southern Pacific Latin American Dist. of the Assemblies of God* (2009) 173 Cal.App.4th 420, 445; *Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2006) 136 Cal.App.4th 119, 128.) But the decision in *Smith I* was not based on the conclusion that plaintiff lacked standing in a procedural sense. Rather, the trial court made a substantive determination, which Division 1 affirmed, that plaintiff could not state a cause of action for wrongful foreclosure because the complaint's allegations and judicially noticeable documents conclusively established that plaintiff defaulted on her loan. Thus, these courts determined plaintiff had no standing to claim injury from the *Smith I* defendants' conduct with respect to the foreclosure.

Boccardo, supra, 134 Cal.App.3d 1037, is instructive. In *Boccardo*, the plaintiffs brought an action in federal court asserting claims for antitrust violations under the Clayton Act (15 U.S.C. § 15). The plaintiffs claimed the defendants engaged in an unlawful conspiracy to fix the price of meat. (*Boccardo*, p. 1040.) The federal court dismissed the action because the plaintiffs did not have direct dealings with the members of the price-fixing conspiracy as required by *Illinois Brick Co. v. Illinois* (1977) 431 U.S. 720. (*Boccardo*, p. 1042.) After the court dismissed the federal action, the plaintiffs filed an action in state

court based upon the Cartwright Act (Bus. & Prof. Code, § 16700 et seq.). (*Boccardo*, p. 1041.) The trial court dismissed the second lawsuit based on res judicata. (*Ibid*.) On appeal, the plaintiffs argued the dismissal of the federal action was based on the procedural bar of standing and thus was not a final judgment on the merits. (*Id*. at p. 1042.) In rejecting this claim, the *Boccardo* court observed, " 'the question of which persons have been injured by an illegal overcharge for purposes of § 4 [of the Clayton Act] is analytically distinct from the question of which persons have sustained injuries too remote to give them standing to sue for damages under § 4.' " (*Id*. at pp. 1042-1043.) Because the federal court dismissed the case on the former ground, "the federal court based its dismissal not on lack of standing but on a substantive determination that appellants had no cause of action under section 4 of the Clayton Act." (*Id*. at p. 1043.) Thus, the *Boccardo* court determined "the dismissal of [the federal action] was a judgment on the merits." (*Ibid*.)

As in *Boccardo*, the trial and appellate courts' rulings in *Smith I* make clear that the dismissal of plaintiff's wrongful foreclosure claim was not based on a procedural defect, but was substantive, based on the conclusion that as a borrower in default plaintiff could not prove she was prejudiced by the alleged defects in the assignment and securitization of the trust deed—prejudice being a requisite element of a wrongful foreclosure claim. (See *Smith I, supra,* B252585 at p. 10.) The judgment in *Smith I* was a decision on the merits.[12]

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[12] After Division 1 affirmed the judgment in *Smith I* and the Supreme Court rejected plaintiff's petition for review, our high court decided *Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, in which the court made the "narrow" ruling that

The trial court correctly concluded the *Smith I* judgment precluded all claims against Nationstar and Homesearch under the res judicata doctrine. The court likewise correctly concluded the *Smith I* judgment precluded the claims for receiving stolen property, cancellation of instruments, conversion, and quiet title against IH4.

"a borrower who has suffered a nonjudicial foreclosure does not lack standing to sue for wrongful foreclosure based on an allegedly void assignment merely because he or she was in default on the loan and was not a party to the challenged assignment." (*Id.* at p. 924.) Although plaintiff cites *Yvanova* to argue she has standing to challenge the foreclosure under current law, there is no legal basis for us to consider the case's potential impact under the res judicata doctrine. As our Supreme Court explained in *Slater v. Blackwood* (1975) 15 Cal.3d 791, res judicata applies even when there has been an intervening change in law, notwithstanding any perceived injustice to an individual plaintiff: "The consistent application of the traditional principle that final judgments, even erroneous ones [citation], are a bar to further proceedings based on the same cause of action is necessary to the well-ordered functioning of the judicial process. It should not be impaired for the benefit of particular plaintiffs, regardless of the sympathy their plight might arouse in an individual case." (*Id.* at p. 797; see also *Zeppi v. State of California* (1962) 203 Cal.App.2d 386, 388-389 ["In every instance where a rule established by case law is changed by a later case the earlier rule may be said to be 'mistaken' . . . . Such 'mistakes' or 'injustices' are not a ground for equity's intervention. So to hold would be to emasculate, if not wipe out, the doctrine of res judicata because the doctrine is most frequently applied to block relitigation based upon contentions that a law has been changed. Our courts have repeatedly refused to treat the self-evident hardship occasioned by a change in the law as a reason to revive dead actions."].)

4. *Plaintiff Failed to State a Claim for Relief on Her Remaining Causes of Action Against IH4*

Plaintiff's remaining claims against IH4 challenge actions it took after purchasing the property from Nationstar. As IH4 argued in its demurrer, plaintiff cannot establish a claim for relief based on this conduct because IH4 prevailed in its unlawful detainer action.

Plaintiff asserted two causes of action for "abuse of process," both charging IH4 with wrongfully instituting the unlawful detainer action to "accomplish a purpose for which said proceedings were not designated." It is settled, however, that "while a defendant's act of improperly instituting or maintaining an action may, in an appropriate case, give rise to a cause of action for malicious prosecution, the mere filing or maintenance of a lawsuit—even for an improper purpose—is not a proper basis for an abuse of process action." (*Oren Royal Oaks Venture v. Greenberg, Bernhard, Weiss & Karma, Inc*. (1986) 42 Cal.3d 1157, 1169.) Moreover, even if these causes of action were treated as malicious prosecution claims, they still would fail, because a plaintiff must show, among other things, the underlying action was "terminat[ed] in favor of the malicious prosecution plaintiff." (*Parrish v. Latham & Watkins* (2017) 3 Cal.5th 767, 775.) Here, it was IH4 that prevailed in its unlawful detainer action—not plaintiff.

Plaintiff's claim for intentional infliction of emotional distress fails for the same reason. In support of the claim, plaintiff alleged IH4 "initiated the unlawful detainer action with reckless disregard of the probability that doing so would cause emotional distress to Plaintiff." However, to prevail on her claim, plaintiff would be required to prove IH4's conduct was

" 'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.' " (*Cochran v. Cochran* (1998) 65 Cal.App.4th 488, 495-496.) That standard plainly could not be met on the basis of IH4 instituting the unlawful detainer action, given that a jury found IH4 had a legal right to possession of the property. (See, e.g., *Sierra–Bay Fed. Land Bank Assn. v. Superior Court* (1991) 227 Cal.App.3d 318, 334 ["It is simply not tortious for a commercial lender to lend money, take collateral, or to foreclose on collateral when a debt is not paid."].)

In her claim for civil extortion, plaintiff alleged that IH4 improperly asserted it was "the new owner" of the property and threatened her tenants with "eviction proceedings" if they failed to "prove their bonafide tenancy." Similarly, in her claim for tortious interference with contractual relations, plaintiff alleged IH4 interfered with the relationship between plaintiff and her tenants by "inducing and threatening Plaintiff's tenants to discontinue the relationship." And, in her claim for violation of Business and Professions Code section 10130, plaintiff asserted IH4 violated the law by negotiating a lease agreement without a broker's license.[13] Because these claims are all premised on plaintiff's assertion that IH4 did not own the property and that it

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[13] Business and Professions Code section 10130 makes it "unlawful for any person to engage in the business of, act in the capacity of, advertise as, or assume to act as a real estate broker or a real estate salesperson within this state without first obtaining a real estate license." The statute does not prohibit an entity that owns real estate from acting on its own behalf in transacting business related to its property.

was not legally entitled to assert the rights of a landlord, the trial court correctly concluded plaintiff could not prevail on the claims given the jury's verdict in favor of IH4 in the unlawful detainer action.

Plaintiff's claim for violation of Business and Professions Code section 17900, although not directly based upon the unlawful detainer action, is similarly insufficient to establish a right to relief. Section 17900, subdivision (b)(2), requires a general partnership to file a fictitious business name statement if it does business under a name that does not include the surname of each general partner. The sole penalty for failing to comply with the statute is set forth in section 17918, which bars an entity from maintaining an action on contracts made in the fictitious business name until the statement is filed. (*Templeton Action Committee v. County of San Luis Obispo* (2014) 228 Cal.App.4th 427, 432.) While plaintiff appears to assert the alleged violation should have barred IH4 from maintaining the unlawful detainer action, this sort of plea in abatement could only properly be made in that action—it does not provide a basis for relief in a separate action against IH4. (See *Traub Company v. Coffee Break Service, Inc.* (1967) 66 Cal.2d 368, 370 ["a plea of lack of capacity of a corporation to maintain an action by reason of a suspension of corporate powers . . . 'is a plea in abatement which is not favored in law, is to be strictly construed and must be supported by facts warranting the abatement' at the time of the plea"]; *Color–Vue, Inc. v. Abrams* (1996) 44 Cal.App.4th 1599, 1604 ["[A] plea in abatement such as lack of capacity to sue 'must be raised by defendant at the earliest opportunity or it is waived. . . . The proper time to raise a plea in abatement is in the original answer or by demurrer at the time of the answer.' "].)

For all these reasons, plaintiff's claim for violation of Business and Professions Code section 17200 also fails, as that claim simply asserts an unfair business practice on the basis of the conduct alleged in the prior causes of action. Because plaintiff failed to allege conduct that was unlawful or otherwise legally actionable against IH4, she cannot state a claim for relief under the statute.

The trial court properly sustained defendants' demurrers. Because plaintiff has failed to identify a legal or factual basis by which she could avoid the *Smith I* judgment's preclusive bar or otherwise state a claim for relief against these defendants, she has not met her burden of establishing the court abused its discretion in denying leave to amend.[14] (See *Rakestraw, supra,* 81 Cal.App.4th at pp. 43-44.)

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[14] Plaintiff also contends the trial court lacked jurisdiction to rule on the demurrers while her appeal from the order denying her motion to set aside the judgment in *Smith I* was pending. And, she argues she was denied due process because the trial judge "wasn't impartial." Neither contention warrants lengthy discussion. The appeal in *Smith I* did not deprive the trial court of jurisdiction in this case because the outcome of this case would not have affected the validity of the judgment in *Smith I* or conflicted with Division 1's jurisdiction over the appeal. (See *Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 196-197 (*Varian*).) As for plaintiff's claim of judicial bias, plaintiff forfeited the contention by failing to raise it in the trial court. (See *People v. Scott* (1997) 15 Cal.4th 1188, 1207.)

5. *The Trial Court Properly Dissolved the Preliminary Injunction after Sustaining IH4's Demurrer Without Leave to Amend*

Finally, we address plaintiff's appeal from the order granting IH4's motion to dissolve the preliminary injunction. Plaintiff contends her appeal from the order denying her motion to set aside the judgment in *Smith I* automatically stayed proceedings in this action, and the trial court therefore lacked jurisdiction to dissolve the preliminary injunction. She also argues the court abused its discretion in dissolving the injunction, even if it had jurisdiction to do so. Neither contention has merit.

"A preliminary injunction is an interim remedy designed to maintain the status quo pending a decision on the merits. [Citation.] It is not, in itself, a cause of action. Thus, a cause of action must exist before injunctive relief may be granted. [Citation.] Accordingly, where the complaint fails to state a cause of action an order granting a preliminary injunction must be reversed." (*MaJor v. Miraverde Homeowners Assn.* (1992) 7 Cal.App.4th 618, 623 (*MaJor*); *Southern Christian Leadership Conference v. Al Malaikah Auditorium Co.* (1991) 230 Cal.App.3d 207, 223 ["A preliminary injunction does not create a right, but merely undertakes to protect a right from unlawful or injurious interference. [Citation.] The fate of a preliminary injunction, having a strictly adjunct character, depends on the main action."].)

Relying upon Code of Civil Procedure section 916, subdivision (a), plaintiff argues her appeal from the order denying her motion to set aside the judgment in *Smith I* automatically stayed proceedings in this case and divested the

trial court of jurisdiction to dissolve the preliminary injunction.[15] Although Division 1 ultimately determined the trial court was correct to deny plaintiff's motion to set aside the *Smith I* judgment, plaintiff argues the preliminary injunction was nonetheless embraced by the appeal, because were the *Smith I* judgment declared void, it would effectively undermine the trial court's basis for sustaining IH4's demurrer under the res judicata doctrine.

Apart from her reliance on a counterfactual in which Division 1 declared the *Smith I* judgment void, plaintiff incorrectly presumes the preliminary injunction could not be dissolved while the judgment in this case was subject to reversal on appeal. As we have explained, because the general purpose

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[15] Code of Civil Procedure section 916, subdivision (a) provides, in pertinent part, "the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order, but the trial court may proceed upon any other matter embraced in the action and not affected by the judgment or order." The statute's purpose is " 'to protect the appellate court's jurisdiction by preserving the status quo until the appeal is decided' "; thus, the automatic stay prevents the trial court from rendering an appeal futile by altering the appealed judgment or order or by conducting other proceedings that may affect it. (*Varian, supra,* 35 Cal.4th at p. 189.) "By contrast, an appeal does not stay proceedings on 'ancillary or collateral matters which do not affect the judgment [or order] on appeal' even though the proceedings may render the appeal moot." (*Id.* at p. 191.) For instance, "a proceeding to expunge a lis pendens is collateral to an appeal from the judgment in the underlying action" and thus is not stayed by such an appeal. (*Ibid.*)

of a preliminary injunction is to preserve the status quo until a final determination of the merits of the action, when the merits are determined and "a judgment is entered in favor of the defendant, the preliminary injunction dissolves." (*City of Oakland, supra,* 136 Cal.App.3d at p. 569.) Thus, while plaintiff might have been entitled to reinstatement of the preliminary injunction had the judgment in favor of IH4 been reversed (see, e.g., *ibid.*), the fact that the judgment was subject to appellate jurisdiction did not mandate that the preliminary injunction remain in place until all appeals potentially affecting the judgment were resolved. (See *Warfield v. Peninsula Golf & Country Club* (1989) 214 Cal.App.3d 646, 661, fn. 14 ["We reject plaintiff's complaint that the trial court erred in dissolving the preliminary injunction while sustaining the demurrer and granting judgment accordingly. Since the pending matter was finally determined in favor of defendant, the injunction dissolved even without the necessity of formal motion. [Citation.] Whether and to what extent the injunction should be reinstated upon remand is a matter committed to the discretion of the trial court following an evidentiary hearing."].)

The same principle defeats plaintiff's contention that the court erred when it dissolved the preliminary injunction after sustaining IH4's demurrer without leave to amend. The unlawful detainer judgment, as affirmed by the appellate division, determined IH4 was the current owner of the property and entitled to possession. After dismissing all claims asserted against IH4, the trial court correctly concluded the preliminary

injunction enjoining IH4 from evicting plaintiff and her tenants must be dissolved.[16] (See *MaJor, supra,* 7 Cal.App.4th at p. 623.)

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[16] Plaintiff argues an 11th-hour amendment substituting "Invitation Homes" for a Doe defendant, one week after the court sustained IH4's demurrer without leave to amend, barred the court from dissolving the injunction until the claims against Invitation Homes were also adjudicated. The argument is totally without merit. Every cause of action in the operative first amended complaint was asserted against IH4, IH4 dba Invitation Homes, or IH2. None of the causes of action was asserted against the Doe defendants or all defendants collectively, and plaintiff failed to amend her complaint to assert any claim against Invitation Homes in any capacity apart from as a fictitious name or "dba" for IH4. Use of the "doing business as" designation does not create a separate legal entity; it is "merely descriptive of the person or corporation who does business under some other name." (*Pinkerton's, Inc. v. Superior Court* (1996) 49 Cal.App.4th 1342, 1348; *Providence Washington Ins. Co. v. Valley Forge Ins. Co.* (1996) 42 Cal.App.4th 1194, 1200.) In dismissing the claims against IH4, the court also necessarily dismissed the claims against IH4 dba Invitation Homes. (See *Pinkerton's,* at p. 1349 ["inasmuch as Pinkerton's, Inc., has been dismissed, the action against it in both its corporate name and its fictitious business name must be dismissed"].)

DISPOSITION

The judgments in favor of defendants Nationstar, Homesearch, and IH4 are affirmed. The order dissolving the preliminary injunction is affirmed. Defendants are entitled to their costs.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EGERTON, J.

We concur:

LAVIN, Acting P. J.

DHANIDINA, J